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9 IN THE UNITED STATES BANKRUPTCY COURT
10 FOR THE DISTRICT OF OREGON

11 In re

12 The Marshall Group, LLC,

Case No. 08-34585-rld11

13 Debtor.

14 Conrad Myers, Chapter 11 Trustee for The
Marshall Group LLC,

Adversary Proceeding
Case No. 09-03294

15 Plaintiff,

16 v.

17 Mark Marshall and David Mazzocco,

18 Defendants. COMPLAINT
(Declaratory Judgment)

19

20 Conrad Myers, Trustee ("Trustee"), by and through his attorneys, hereby alleges
21 as follows:

22 **JURISDICTION AND VENUE**

23 1.

24 This court has jurisdiction of this proceeding pursuant to 28 U.S.C. §§ 157 and
25 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue is proper pursuant
26 to 28 U.S.C. § 1409.

1 **PARTIES**

2 2.

3 On September 4, 2008 (the "Petition Date"), The Marshall Group LLC ("Debtor"
4 or "Marshall Group") filed a petition for relief under Chapter 11 of Title 11, United States Code.

5 3.

6 Trustee was appointed as Chapter 11 Trustee for Debtor on May 8, 2009.

7 4.

8 Defendant Mark Marshall ("Marshall") is an Oregon resident.

9 5.

10 Defendant David Mazzocco ("Mazzocco") is a California resident.

11 **FACTUAL ALLEGATIONS**

12 6.

13 Debtor is the surviving entity of a roll-up consolidation agreement dated July
14 31, 2008 ("Roll-Up Agreement"). A copy of the Roll-Up Agreement is attached as Exhibit 1.

15 7.

16 Debtor or its predecessor entities is a developer/owner of commercial property
17 and operates urgent care medical centers in McMinnville and Redmond, Oregon.

18 **(Ownership of Redmond Property)**

19 8.

20 Marshall Redmond, LLC ("Marshall Redmond") was formed as an Oregon
21 limited liability company. The Marshall Redmond Operating Agreement indicates that the sole
22 member of Marshall Redmond was Marshall Properties, LLC ("Marshall Properties"). Under the
23 Roll-Up Agreement, Marshall Properties was merged into Debtor.

24 9.

25 On May 21, 2002, the property located at 3818 SW 21st Street, Redmond, Oregon
26 ("Redmond Property") was purchased by Mark and Cathy Jo Marshall for the sum of

1 \$482,205.00. On July 29, 2005, the Redmond Property was conveyed by Mark and Cathy Jo
2 Marshall to Marshall Redmond.

3 10.

4 Also on July 29, 2005, a warranty deed was executed allegedly conveying the
5 Redmond Property from Marshall Redmond to Mazzocco. A copy of the warranty deed is
6 attached as Exhibit 2.

7 11.

8 In the arbitration proceeding of *Keeton-King Construction, Inc. v. Marshall*, No.
9 75110Y 00320 08 MOMA ("Arbitration Proceeding") Marshall signed and tendered to the
10 arbitrators a sworn declaration dated June 25, 2009, indicating that the transaction between
11 Mazzocco and Marshall Redmond was simply a financing transaction and that title to the
12 Redmond Property continued to be held equitably in Marshall Redmond. Mazzocco indicated
13 the same in a deposition conducted on May 20, 2009. As such, the bankruptcy estate is the sole
14 member of Marshall Redmond and therefore should control the ownership and leasing of the
15 Redmond Property. While not an ownership interest, Trustee acknowledges that Mazzocco has
16 an equitable lien in the Redmond Property inferior to the secured lender.

17 **(Purported "Master Lease" Agreement)**

18 12.

19 Since July 29, 2005, a series of leases have been generated regarding the
20 Redmond Property, including a "master lease" that purports to show Marshall as the master
21 tenant and Mazzocco as the master landlord. The "master lease" was dated August 1, 2005 and
22 expired July 31, 2007.

23 13.

24 After the "master lease" was purportedly entered into, an employee of Mazzocco,
25 a Ms. Betty Surratt, mailed letters to tenants at the Redmond Property on or about October 14,
26 2007, demanding that rent be paid directly to Mazzocco. Based upon the Trustee's investigation,

1 no rent was ever paid under a master lease agreement from Marshall to Mazzocco. On
2 information and belief, there were other purported lease documents that appear to be inconsistent
3 with the existence of a master lease.

4 14.

5 Neither the "master lease" nor any amendments, renewals, or subsequent leases
6 purported to be of the same nature were listed in the bankruptcy schedules. If Marshall Group
7 had an obligation to pay rent to Marshall under the master lease, no rent had ever been paid and
8 that executory contract should have been listed in the bankruptcy schedules. If the master lease
9 had been in effect, Mazzocco would be a creditor of Marshall and not of the bankruptcy estate.

10 **(Redmond Property Rent Agreement)**

11 15.

12 At the time the Trustee was appointed in this bankruptcy proceeding, Marshall
13 and his representatives represented to the Trustee that there was an informal arrangement in
14 effect with Mazzocco which provided that Marshall Group was to pay utilities and insurance and
15 take care of maintenance of the Redmond Property and the Lincoln City property in lieu of rent.
16 Trustee has in fact paid utilities and insurance at both property and has paid for landscaping at
17 the Redmond Property pursuant to said arrangement, in lieu of paying rent for the Redmond
18 Property.

19 16.

20 Subsequent to the initial representations made to the Trustee that Mazzocco was
21 the estate's landlord and had agreed to the informal rent arrangements described above, Marshall
22 and his representative then asserted that after reviewing the facts and circumstances, the
23 Redmond Property was in fact never actually transferred to Mazzocco, but rather the deed that
24 was delivered to Mazzocco and recorded was actually intended as security.

25 \\\

26 \\\

1 17.

2 Trustee will pay fair market rent on the Redmond Property (net of amounts paid
3 for utilities, insurance and landscaping) into a segregated bank account pending resolution of this
4 adversary proceeding.5 **(Mazzocco Is Alter Ego of Marshall)**

6 18.

7 Mazzocco and Marshall appear to have a close relationship. Mazzocco is 87
8 years old. The Trustee believes that Mazzocco may lack the ability to make business decisions
9 independent of Marshall. Trustee further asserts that Marshall is currently influencing the
10 financial affairs of Mazzocco for his own personal benefit, and that Mazzocco is merely the alter
11 ego of Marshall with respect to all aspects of the Redmond Property.

12 19.

13 At the close of escrow between Mazzocco and Marshall Redmond on July 29,
14 2005, the sum of \$1,208,250.59 was distributed on account of seller. Trustee has not located any
15 evidence showing that Marshall Redmond or Marshall Group received the sale proceeds, and to
16 the contrary has information that the funds were distributed directly to Marshall or paid on
17 account of Marshall's personal loans outstanding to third party lenders. Trustee believes that
18 Marshall personally benefited from the sale.19 **(McMinnville Property Rent Owed By Marshall)**

20 20.

21 Debtor's bankruptcy estate owns real property located in McMinnville, Oregon.
22 The real property houses an immediate care center operated by the estate. It also houses the
23 State Farm insurance agency owned and operated by Marshall. Although a lease was entered
24 into between Marshall and the Marshall Group, Marshall has disavowed this lease and has never
25 paid rent. The Trustee requested that Marshall commence making rent and made a proposal for a
26 rental rate that the Trustee believed was reasonable under the current market conditions.

1 21.

2 Marshall refused to pay rent to Trustee and in turn, orchestrated a demand through
3 Mazzocco that the estate commence paying rent in an exorbitant sum for its continued occupancy
4 at the Redmond Property, and back to the commencement of the Trusteeship. Marshall's demand
5 made through Mazzocco is intended to result in Marshall not being required to pay rent to estate
6 for use of the McMinnville facility.

7 **FIRST CLAIM FOR RELIEF**

8 **(Declaratory Judgment)**

9 22.

10 Trustee realleges paragraphs 1 through 21 as if fully set forth herein.

11 23.

12 Trustee is entitled to a declaratory judgment as to all defendants as follows:

13 A. Marshall Group is the equitable owner of and shall control all
14 aspects of the Redmond Property, including leasing;

15 B. Marshall and Mazzocco are judicially estopped from alleging that
16 Mazzocco is the owner of the Redmond Property;

17 C. Mazzocco has an equitable lien in the Redmond Property inferior
18 to the secured lender;

19 D. The alleged "Master Lease" agreement dated August 1, 2005, and
20 any amendments, renewals or subsequent leases purported to be of the same nature are
21 unenforceable;

22 E. In the alternative, to the extent the Court finds Mazzocco is the
23 owner of the Redmond Property, Marshall Group may continue occupancy by doing one of the
24 following:

25 i. Trustee will pay utilities and landscaping expenses for the
26 Redmond Property in lieu of rent, per the current agreement between Marshall and Mazzocco; or

4 WHEREFORE, Trustee prays for judgment as follows:

11 C. Mazzocco has an equitable lien in the Redmond Property inferior
12 to the secured lender;

13 D. The alleged "Master Lease" agreement dated August 1, 2005, and

14 any amendments, renewals or subsequent leases purported to be of the same nature are
15 unenforceable;

19 i. Trustee will pay utilities and landscaping expenses for the
20 Redmond Property in lieu of rent, per the current agreement between Marshall and Mazzocco; or

24 |||

25 |||

26 |||

1 2. A judgment for Trustee's costs and disbursements incurred herein;

2 and

3 3. For such other and further relief as the court may deem just and

4 equitable.

5 Dated: September 15, 2009.

6 **FARLEIGH WADA WITT**

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8

9 By: /s/ Peter C. McKittrick

10 Peter C. McKittrick, OSB #852816

11 pmckittrick@fwqlaw.com

12 Christopher L. Parnell, OSB #054352

13 cparnell@fwqlaw.com

14 (503) 228-6044

15 Of Attorneys for Plaintiff Conrad Myers,
16 Chapter 11 Trustee

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ROLL-UP CONSOLIDATION AGREEMENT

The parties to this Roll-Up Consolidation Agreement ("Agreement") are The Marshall Group, LLC ("TMG"), Marshall Medical, LLC ("MM"), Lincoln City Immediate Health Care, LLC ("LCIC"), Redmond Immediate Health Care, LLC ("RIC"), McMinnville Immediate Health Care, LLC ("MIC"), Marshall Properties, LLC ("MP"), Marshall McMinnville, LLC ("MMC"), and M & CJ, LLC ("M&CJ"), collectively the "Entities."

RECITALS

- A. TMG is the sole member of MM, MP, and M&CJ.
- B. MM is the sole member of LCIC, RIC and MIC.
- C. MP is the sole member of MMC.
- D. In order to reduce paperwork and duplication of tasks, simplify accounting and other bookkeeping, take advantage of economies of scale and generally enhance the efficiency of the operations of the Entities, the members desire to combine and roll-up the Entities into TMG as the sole remaining entity ("Remaining Entity").

NOW, THEREFORE, in consideration of the mutual promises contained this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each and all of the Entities and the Marshalls agree as follows:

1. Asset Transfers and Dissolutions. The following events shall occur in the following order:

1.1 Transfer of Assets to Marshall Medical, LLC. The assets and liabilities of LCIC, RIC and MIC will be transferred to MM, and LCIC, RIC and MIC will be dissolved.

1.2 Transfer of Assets to Marshall Properties, LLC. The assets and liabilities of MMC will be distributed to MP, and MMC will be dissolved.

1.3 Transfer of Assets to The Marshall Group, LLC. The assets and liabilities of MM, MP and M&CJ will be distributed to TMG, and MM, MP and M&CJ will be dissolved.

2. Remaining Entity. As a result, all assets of the Entities will be owned by the Remaining Entity subject to all liabilities of the dissolved Entities.

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ROLL-UP CONSOLIDATION AGREEMENT

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3. Resolutions. Each and all of the Entities shall adopt resolutions by their respective members authorizing the transfer of its assets and its dissolution as provided in this Agreement.

4. Representations. Each Entity represents that its members have the authority to enter into this Agreement and to carry out the Entity's obligations under this Agreement, including without limitation, the transfer of assets and dissolution of the Entity.

5. Binding Effect. This Agreement will be binding on and inure to the benefit of the parties and their respective heirs, personal representatives, successors, and permitted assigns.

6. Assignment. Neither this Agreement nor any of the rights, interests, or obligations under this Agreement may be assigned by any party without the prior written consent of the other parties, which consent may be withheld in the other party's sole discretion.

7. No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or will be construed to confer on any entity or person, other than the parties to this Agreement, any right, remedy, or claim under or with respect to this Agreement.

8. Amendments. This Agreement may be amended only by an instrument in writing executed by all the parties, which writing must refer to this Agreement.

9. Further Assurances. Each party agrees (a) to execute and deliver such other documents and (b) to do and perform such other acts and things, as any other party may reasonably request, to carry out the intent and accomplish the purposes of this Agreement.

10. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the state of Oregon, without regard to conflict-of-laws principles.

11. Attorney Fees. If any arbitration, suit, or action is instituted to interpret or enforce the provisions of this Agreement, to rescind this Agreement, or otherwise with respect to the subject matter of this Agreement, the party prevailing on an issue will be entitled to recover with respect to such issue, in addition to costs, reasonable attorney fees incurred in the preparation, prosecution, or defense of such arbitration, suit, or action as determined by the arbitrator or trial court, and if any appeal is taken from such decision, reasonable attorney fees as determined on appeal.

12. Injunctive and Other Equitable Relief. The parties agree that the remedy at law for any breach or threatened breach by a party may, by its nature, be inadequate, and that the other parties will be entitled, in addition to damages, to a restraining order,

temporary and permanent injunctive relief, specific performance, and other appropriate equitable relief, without showing or proving that any monetary damage has been sustained.

13. Entire Agreement. This Agreement (including the documents and instruments referred to in this Agreement) constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreements, whether written or oral, among the parties with respect to such subject matter.

DATED this 30th July, 2008.

The Marshall Group, LLC, an
Oregon limited liability company

By: Mark R. Marshall
Mark R. Marshall, Member

By: Cathy Jo Marshall
Cathy Jo Marshall, Member

Marshall Medical, LLC, an
Oregon limited liability company

By: The Marshall Group, LLC
its Sole Member

By: Mark R. Marshall
Mark R. Marshall, Member

By: Cathy Jo Marshall
Cathy Jo Marshall, Member

Marshall Properties, LLC, an
Oregon limited liability company

By: The Marshall Group, LLC
its Sole Member

By: Mark R. Marshall
Mark R. Marshall, Member

By: Cathy Jo Marshall
Cathy Jo Marshall, Member

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ROLL-UP CONSOLIDATION AGREEMENT

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EXHIBIT 1
PAGE 3 OF 5

M & CJ, LLC, an Oregon limited liability company

By: The Marshall Group, LLC
its Sole Member

By: Mark R. Marshall
Mark R. Marshall, Member

By: Cathy Jo Marshall
Cathy Jo Marshall, Member

Lincoln City Immediate Health Care, LLC,
an Oregon limited liability company

By: Marshall Medical, LLC,
its Sole Member

By: The Marshall Group, LLC,
its Sole Member

By: Mark R. Marshall
Mark R. Marshall, Member

By: Cathy Jo Marshall
Cathy Jo Marshall, Member

Redmond Immediate Health Care, LLC,
an Oregon limited liability company

By: Marshall Medical, LLC,
its Sole Member

By: The Marshall Group, LLC,
its Sole Member

By: Mark R. Marshall
Mark R. Marshall, Member

By: Cathy Jo Marshall
Cathy Jo Marshall, Member

ROLL-UP CONSOLIDATION AGREEMENT
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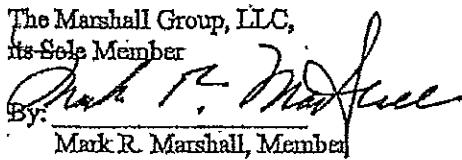
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EXHIBIT
PAGE 4 OF 5

McMinnville Immediate Health Care, LLC,
an Oregon limited liability company

By: Marshall Medical, LLC,
its Sole Member

By: The Marshall Group, LLC,
its Sole Member


By: Mark R. Marshall
Mark R. Marshall, Member

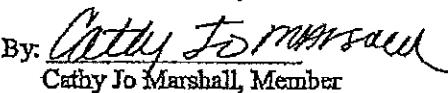
By: 
Cathy Jo Marshall
Cathy Jo Marshall, Member

Marshall McMinnville, LLC, an
Oregon limited liability company

By: Marshall Properties, LLC,
its Sole Member

By: The Marshall Group, LLC,
its Sole Member


By: Mark R. Marshall
Mark R. Marshall, Member

By: 
Cathy Jo Marshall
Cathy Jo Marshall, Member

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK

2005-49454



\$31.00

07/29/2005 01:56:27 PM

After recording return to:
 WESTERN TITLE & ESCROW COMPANY
 1215 NE BAKER STREET - PO BOX 628
 McMINNVILLE, OR 97128

D-D Cnt=1 Stn=1 BECKY
 \$5.00 \$11.00 \$10.00 \$5.00

Until a change is requested all tax statements
 shall be sent to the following address:
 DAVID E. MAZZOCO
 75-855 SARAZEN WAY
 PALM DESERT, CA 92111-6931

WARRANTY DEED -- STATUTORY FORM

MARSHALL REDMOND, LLC, AN OREGON LIMITED LIABILITY COMPANY, Grantor, conveys
 and warrants to DAVID E. MAZZOCO, Grantee, the following described real
 property, free of encumbrances except as specifically set forth herein, to wit:

Lot 1, FRANK'S LANDING, City of Redmond, Deschutes County, Oregon.

This property is free from encumbrances, EXCEPT: All those items of record, if
 any, as of the date of this deed, including any real property taxes due, but
 not yet payable.

The true consideration for this conveyance is \$ 4,300,000.00, A PORTION OF WHICH
 WAS PAID BY AN ACCOMMODATOR PURSUANT TO AN IRC SECTION 1031 TAX DEFERRED EXCHANGE.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN
 THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND
 REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE
 PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE
 APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED
 USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR
 FOREST PRACTICES AS DEFINED IN ORS 30.930.

Dated this 15th day of July, 2005.

MARSHALL REDMOND, LLC
 By: MARSHALL PROPERTIES, LLC, MEMBER

Mark R. Marshall

By: Mark R. Marshall, Member of the
 Marshall Group, LLC, sole member of
 Marshall Properties, LLC, as member of
 Marshall Redmond, LLC

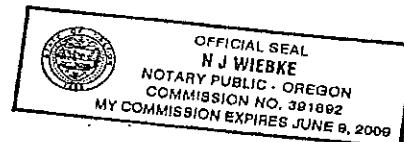
STATE OF OREGON, COUNTY OF YAMHILL) ss.

This instrument was acknowledged before me on July 15th, 2005 by MARK R.
 MARSHALL, MEMBER ACTING ON BEHALF OF MARSHALL GROUP, LLC, AN OREGON LIMITED
 LIABILITY COMPANY, AS SOLE MEMBER OF THE MARSHALL PROPERTIES, LLC, AN OREGON
 LIMITED LIABILITY COMPANY, AS MEMBER ACTING ON BEHALF OF MARSHALL REDMOND, LLC,
 AN OREGON LIMITED LIABILITY COMPANY.

Mark R. Marshall
 (Notary Public for Oregon)
 My commission expires 6-7-09

TITLE NO. 40-0174105
 ESCROW NO. 40-0174105

15-COSOSOS



RECORDED BY:
 WESTERN TITLE & ESCROW CO.

EXHIBIT 2
 PAGE 1 OF 1